Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1713

RED LAKE BAND OF CHIPPEWA INDIANS,
Petitioner,

v.

STATE OF MINNESOTA and COUNTIES OF ROSEAU, PENNINGTON, MARSHALL, RED LAKE, POLK, CLEARWATER, BELTRAMI, LAKE OF THE WOODS, and KOOCHICHING,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF FOR THE STATE OF SOUTH DAKOTA, *ET AL.*, AS AMICI CURIAE IN SUPPORT OF PETITION

MARK V. MEIERHENRY
Attorney General
State of South Dakota
State Capitol
Pierre, South Dakota 57501
(605) 773-3215

DENNIS R. HOLMES
Assistant Attorney General
State of South Dakota
State Capitol
Pierre, South Dakota 57501

(Other States Joining Set Forth on Inside Cover)

The following States, by their respective Attorneys General, join in the views expressed herein:

STATE OF IOWA
THOMAS J. MILLER
Attorney General
State Capitol
Des Moines, Iowa 50319
(515) 281-5164

STATE OF KANSAS
ROBERT T. STEPHAN
Attorney General
Kansas Judicial Center
Second Floor
Topeka, Kansas 66612
(913) 296-2215

STATE OF NEBRASKA
PAUL L. DOUGLAS
Attorney General
State Capitol
Lincoln, Nebraska 68509
(402) 471-2682

STATE OF NORTH DAKOTA
ALLEN I. OLSON
Attorney General
State Capitol
Bismarck, North Dakota 58505
(701) 224-2210

STATE OF OKLAHOMA
JAN ERIC CARTWRIGHT
Attorney General
112 State Capitol
Oklahoma City, Oklahoma
73105
(405) 521-3921

STATE OF UTAH
ROBERT B. HANSEN
Attorney General
236 State Capitol
Salt Lake City, Utah 84114
(801) 533-5261

Certain other interested States did not have an opportunity to fully examine the merits of the question presented prior to the printing of this Brief. The Office of the Clerk will be advised directly if those States elect to join in the views expressed herein.

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INTEREST OF AMICI CURIAE

The State of South Dakota and the other States joining herein have a general interest in the manner in which any question of Federal Indian Law is resolved. With respect to the instant case, the issue of reservation status is of particular importance to those States containing historic reservation areas, such as certain Amici States here, since the resolution of this

issue can significantly affect the extent to which the States may exercise jurisdiction within those areas. Thus, the principles, guidelines and methods of analysis used by the courts in resolving questions of reservation status are of paramount concern to the States joining in this Brief.

ARGUMENT

The Amici States concur in the arguments advanced by the Respondent Counties in their Memorandum, and share their concern that there is presently a conflict between state and federal courts regarding the interpretation of the Nelson Act, 25 Stat. 642 (1889), which typifies the reservation cession acts of this period. In its decision below, the Court of Appeals stated only its conclusion that the Nelson Act had the effect of diminishing the boundaries of the Red Lake Reservation. 614 F.2d at 1162. While the Amici States concur in the result, they are concerned by the fact that the court neither stated the rationale for its conclusion nor attempted to distinguish the several state and federal court decisions which have reached the opposite conclusion concerning the effect of the Act on other reservation areas similarly treated under the Act. *See Leech Lake Band of Chippewa Indians* v. *Herbst,* 334 F. Supp. 1001 (D. Minn. 1971); *State* v. *Clark,* 282 N.W.2d 902 (Minn. 1979), *cert. denied,* ____ U.S. ____, 100 S.Ct. 1080 (1980); *State* v. *Forge,* 262 N.W.2d 341 (Minn. 1977), *appeal dismissed,* 435 U.S. 919 (1978). The failure of the court below to articulate its reasoning or to discuss the highly relevant decisions of *DeCoteau* v. *District County Court,* 420 U.S. 425 (1975) and *Rosebud Sioux Tribe* v. *Kneip,* 430 U.S. 584 (1977) is hardly in keeping with the analytical guidelines set forth by this Court in the latter decisions.

Moreover, the Eighth Circuit's treatment of the instant case is indicative of its inconsistent approach to the question of the disestablishment of Indian reservations or portions thereof.

Compare, e.g., United States ex rel. Cook v. *Parkinson,* 525 F.2d 120 (8th Cir. 1975), *cert. denied,* 430 U.S. 982 (1977); and *Rosebud Sioux Tribe* v. *Kneip,* 521 F.2d 87 (8th Cir. 1975), *aff'd,* 430 U.S. 584 (1977); *with United States* v. *Dupris,* 612 F.2d 319 (8th Cir. 1979), *vacated mem.,* ____ U.S. ____, 48 U.S.L.W. 3785 (June 2, 1980); and *United States* v. *Long Elk,* 565 F.2d 1032 (8th Cir. 1977). While this question must to some extent be considered on a case-by-case basis, the Eighth Circuit's inconsistent treatment underscores the need for a "well-defined body of principles." *Washington* v. *Confederated Tribes,* ____ U.S. ____, 48 U.S.L.W. 4668, 4679 (June 2, 1980) (Rehnquist, J., concurring and dissenting). These principles have been clearly stated by this Court, but it is apparent that they need to be re-emphasized in order to avoid erosion by the seemingly arbitrary approach of certain of the lower courts.

The failure of the Court of Appeals to adequately explain its decision below exacerbates the conflict resulting from that decision. This conflict creates confusion as to the proper application of the principles stated by this Court in *Rosebud Sioux Tribe* v. *Kneip, supra* and *DeCoteau* v. *District County Court, supra,* and therefore serves to undermine those principles. For this reason, the Amici States support the position of the Respondent Counties that certiorari be granted in order to resolve the conflict regarding the important questions presented by this case.

CONCLUSION

For the foregoing reasons, the Amici Curiae urge that certiorari be granted.

Respectfully submitted,

MARK V. MEIERHENRY
Attorney General
State of South Dakota
State Capitol
Pierre, South Dakota

DENNIS R. HOLMES
Assistant Attorney General
State of South Dakota
State Capitol
Pierre, South Dakota

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